

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

Ivan PETYAEV

Atty. Ref.: 620-433; Confirmation No. 8419

Appl. No. 10/574,852

TC/A.U. 1623

Filed: April 6, 2006

Examiner: Peselev

For: METHOD AND MEANS FOR MODULATING LIPID METABOLISM

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January 25, 2010

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**REQUEST TO WITHDRAW THE FINALITY OF THE OFFICE ACTION DATED
OCTOBER 30, 2009 AND RE-MAILING OF NEW, NON-FINAL ACTION WITH DATE
FOR RESPONSE RE-SET FROM MAILING OF NEW NON-FINAL OFFICE ACTION**

The Examiner is requested to withdraw the finality of the Office Action dated October 30, 2009 and re-mail a new, non-final Office Action with the date for response re-set from mailing of new, non-final office action, as the finality of the Office Action dated is submitted to be premature and contrary to the MPEP.

Specifically, the undersigned notes that the Office Action dated October 30, 2009 contains a rejection of claims 36 under Section 112, first paragraph, for an alleged lack of written description support, which was not necessitated by the applicants Response of July 9, 2009. The rejection of claims 36 under Section 112, first paragraph, was made in the Office Action of October 20, 2009 for the first time, as a final rejection. The Response of July 9, 2009 to the non-final Office Action of February 12, 2009 did not

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amend the claims such that the new rejection of claims 36 in the Office Action of
October 30, 2009 could not have been necessitated by the Response to the non-final
Office Action.

MPEP § 706.07(a) provide, in relevant part, as follows:

706.07(a) Final Rejection, When Proper on Second Action

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims, nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p). See http://www.uspto.gov/web/offices/pac/mpep/documents/0700_706_07_a.htm#sect706.07a (January 22, 2010).

The finality of the Office Action dated October 30, 2009 is submitted to be premature and contrary to the MPEP, as explained in MPEP § 706.07(a), for example. Withdrawal of the finality of the Office Action and re-mailing of a new, non-final Office Action, with the date for response being re-set from the mailing of the new Action, are requested.

A fee is not believed to be required for consideration of the present Request as the Request is only believed to be required due to an error and/or oversight by the Examiner. The Office is authorized however to charge the undersigned's Deposit Account No. 14-1140 for any fee believed to be required for consideration of the present

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Request. Written notification to the undersigned of any charge to the undersigned's
Deposit Account in this regard is requested.

Respectfully submitted,

NIXON & VANDERHYE P.C.

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